Before the
Federal Communications Commission
Washington, DC

In the Matter of	)	
	)	
Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas	)	WC Docket No. 06-172

COMMENTS OF COX COMMUNICATIONS, INC. ON MOTION TO COMPEL DISCLOSURE OF CONFIDENTIAL INFORMATION PURSUANT TO PROTECTIVE ORDER AND ON MOTION TO DISMISS

Cox Communications, Inc., on behalf of its affiliates Cox Rhode Island Telcom, LLC and Cox Virginia Telcom, Inc. (collectively, "Cox"), by its attorneys, hereby submits its comments in response to the Motion to Compel Disclosure of Confidential Information and the Motion to Dismiss filed in the above-referenced proceeding.[1] Cox agrees that it was improper for the Verizon Telephone Companies ("Verizon") to use E911 information in this proceeding without the consent of affected CLECs (including Cox) and that Verizon, like all other parties, should be

[1] *See* "Pleading Cycle Established for Comments on Motion to Compel Disclosure of Confidential Information Pursuant to Protective Order and Motion to Dismiss," *Public Notice,* WC Docket No. 06-172, DA 06-2056, Oct. 18, 2006. The public notice sought comment on two separate motions in this proceeding. *See* Motion to Compel Disclosure of Confidential Information Pursuant to Protective Order of Broadview Networks, Inc., Covad Communications Group, NuVox Communications, Inc. and XO Communications, Inc., WC Docket No. 06-172, filed Oct. 11, 2006, *amended* Oct. 13, 2006 (the "Motion to Compel"); Motion to Dismiss of ACN Communications Services, Inc., Alpheus Communications, L.P., ATX Communications, Inc., Cavalier Telephone Corporation, CityNet Pennsylvania, LLC, CTSI, LLC, DSLnet Communications, LLC, Eureka Telecom, Inc. d/b/a InfoHighway Communications, Integra Telecom, Inc., McLeodUSA Telecommunications Services, Inc., Mpower Communications Corp., NuVox Communications, Inc., RCN Telecom Services, Inc., Talk America Holdings, Inc., TDS Metrocom, LLC, and U.S. Telepacific Corp. d/b/a Telepacific Communications and XO Communications, Inc., WC Docket No. 06-172, filed Oct. 16, 2006 (the "Motion to Dismiss").

required to make all of the confidential information in its pleadings available to any participant in this proceeding that has agreed to comply with the protective order.

As the underlying petitions demonstrate, Cox is the principal competitor to Verizon in two of the markets that are the subject of this proceeding, and Cox's services and facilities are central to Verizon's competition claims in those markets.[2] Consequently, Cox anticipates participating actively in this proceeding. As a competitor that could be affected by grant of Verizon's petitions, Cox has a strong interest in ensuring that it has the ability to test all of Verizon's factual claims concerning the state of competition in the Providence and Virginia Beach MSAs. Cox also has a strong interest in ensuring that Verizon complies with all of its obligations to maintain confidentiality of proprietary and sensitive information concerning Cox, as required by applicable law and by Verizon's interconnection agreements with Cox. In light of these interests, Cox finds Verizon's approach to confidential information, and particularly to the use of E911 information, troubling and disingenuous. Put simply, Verizon should not be permitted to use confidential information concerning other carriers in this proceeding to make its case – particularly when that information is governed by private contractual arrangements – and then shield that information from interested parties on the ground that it is confidential.

I. Verizon's Use of E911 Data Violates Its Obligations Under Its Interconnection Agreements with Cox.

The Motion to Dismiss describes how Verizon's use of data collected in connection with 911 and E911 service in its petitions violates the terms of various parties' interconnection agreements. As the Motion to Dismiss explains, "Verizon's interconnection agreements do not

[2] *See, e.g.,* Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Providence Metropolitan Statistical Areas, WC Docket No. 06-172, filed Sept. 6, 2006, at 4-7; Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Virginia Beach Metropolitan Statistical Area, WC Docket No. 06-172, filed Sept. 6, 2006, at 4-7.

authorize any use of confidential information for the purpose of seeking forbearance from Verizon's legal obligations before the Commission[.]"[3]

Cox's interconnection agreements with Verizon in Rhode Island and Virginia also contain provisions concerning confidential information, and they have essentially the same language as the agreements described in the Motion to Dismiss. For instance, under Cox's interconnection agreement in Virginia, "Proprietary Information" includes "All information . . . that is furnished by one Party to the other Party and that . . . contains customer specific, facility specific, or usage specific information, other than customer information communicated for the purpose of directory publication or directory database inclusion." Each party is required to "keep all of the other Party's Proprietary Information confidential in the same manner it holds its own Proprietary Information confidential." Moreover, each party "shall use the other Party's Proprietary Information only for performing the covenants contained in" the interconnection agreement, and neither party may "use the other Party's Proprietary Information for any other purpose except upon such terms and conditions as may be agreed upon between the Parties in writing or to enforce its rights" under the agreement.[4]

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[3] Motion to Dismiss at 4.

[4] Interconnection Agreement between Cox Virginia Telcom, Inc. and Verizon Virginia, Inc., dated October 8, 2002 ("Cox-Verizon VA Agreement"), § 28.4; *see also* Interconnection Agreement between Cox Virginia Telcom, Inc. and Verizon South Inc., f/k/a GTE South Incorporated ("Cox-Verizon South Agreement"), dated January 24, 2003, § 28.4 (same language as Verizon Virginia agreement); Interconnection Agreement between Cox Rhode Island Telcom, L.L.C. d/b/a Cox Communications and Verizon New England, Inc., d/b/a Verizon Rhode Island, dated February 4, 1999 ("Cox-Verizon RI Agreement"), § 29.6. The full text of each of these provisions is included in Attachment 1 to these comments.

The Cox-Verizon agreements in Virginia also contain a separate provision recognizing that "customer-specific network usage information" is customer proprietary network information that is protected by Section 222 of the Communications Act. Cox-Verizon VA Agreement, § 28.4.3; Cox-Verizon South Agreement, § 28.4.3. Under Section 222(b), Verizon is required to use "proprietary information" that it "receives or obtains" "from another carrier for purposes of providing any telecommunications service . . . only for such purpose[.]" 47 U.S.C. § 222(b).

Verizon obtained Cox's proprietary customer information by virtue of its role as the E911 database administrator for the localities served by Cox, and in accordance with the terms of its interconnection agreements with Cox. Verizon did not ask Cox's permission before using the customer-specific data contained in the E911 databases for Providence and Virginia Beach to prepare its petitions and, needless to say, Verizon's petitions in no way enforce its rights under any of its interconnection agreements with Cox in these markets. Moreover, Verizon's use and disclosure of E911 database information does not fall within any of the exceptions under the agreements, such as for information that already is public, that is developed independently by the receiving party or that the receiving party is required to disclose under applicable law.[5]

Even if Verizon were to claim that this proceeding falls under the provision that permits disclosures when required by applicable law, it would be incorrect. First, Verizon was under no obligation to provide the Commission with the E911 information; it chose to do so voluntarily, and there is no requirement to use E911 data in forbearance petitions.[6] In fact, Verizon had several alternatives to using confidential E911 data to make its competitive showing. For instance, Verizon could have conducted telephone surveys to see where customers had purchased service from other providers, and provided the results of those surveys to the Commission.

Moreover, to the extent there is any rationale for applying the governmental exception, Verizon failed to comply with the explicit terms of the agreements that address such situations,

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Use of customer-specific data provided to Verizon so that it could perform E911-related functions clearly falls within this prohibition, and so as a matter of federal law Verizon is not permitted to use the E911 data without specific authorization.

[5] Cox-Verizon VA Agreement, § 28.4.4; Cox-Verizon South Agreement, § 28.4.4 (same); Cox-Verizon RI Agreement, § 29.6.2 (only disclosure to government authorities permitted).

[6] The Commission should note that Verizon's violation of the confidentiality provisions cannot be cured by a later order that the E911 data be provided, since the initial disclosure was voluntary.

and that require it to provide Cox with "written notice" "prior to such disclosure" when it is required to disclose data to regulators, so that Cox has the opportunity to seek appropriate protection for the data.[7] It is no answer for Verizon to claim that the protective order adopted in this proceeding offers sufficient protection to Cox: The interconnection agreement specifically requires Verizon to give Cox time to make that determination for itself and to protect its interests. Besides, as is apparent from the submissions concerning the petition for reconsideration of the protective order, there are significant concerns about the adequacy of that order.[8]

It also is irrelevant that E911 data may have been provided to the Commission in other proceedings. Cox's interconnection agreements provide that a failure to take enforcement action concerning one violation of an agreement does not constitute a waiver of any future violation, so previous submissions of confidential information by Verizon do not affect Verizon's current obligations.[9] In addition, there is no basis to conclude that submissions of E911 information in other, unrelated proceedings, such as mergers, are relevant to the question of whether such submissions are necessary, or even desirable, in the context of a Section 10 forbearance proceeding.

Taken together, these facts demonstrate that Verizon has violated the terms of its interconnection agreements with Cox by using E911 data to support its arguments in this

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[7] Cox-Verizon RI Agreement, § 29.6.2; *see also* Cox-Verizon South Agreement, § 28.4.4(f) (requiring "commercially reasonable efforts" to provide "adequate notice of the requirement" to disclose); Cox-Verizon VA Agreement, § 28.4.4(f) (same). Of course, Verizon had ample opportunity to provide notice to Cox because Verizon decided when to file the petitions.

[8] *See* Comments of Cox Communications, Inc. on Petition for Reconsideration of Protective Order, WC Docket No. 04-172, filed Oct. 26, 2006.

[9] Cox-Verizon VA Agreement, § 28.18; Cox-Verizon South Agreement, § 28.18; Cox-Verizon RI Agreement, § 29.10.

proceeding. That abuse should be recognized and Verizon should be penalized accordingly. At a minimum, Verizon should not be permitted to use E911 data to support its case. However, the Commission could reasonably adopt other sanctions as well.

II. Verizon Should Be Required to Comply with the Terms of the Protective Order and Make All Confidential Data Available to Parties that Have Agreed to the Terms of the Order.

Like the parties that filed the Motion to Compel, Cox has had representatives, including its counsel, sign the acknowledgment that accompanied the protective order in this proceeding and has requested that Verizon provide it with unredacted versions of the petitions. Also like the parties that filed the Motion to Compel, Cox has received partially-unredacted versions of the petitions, which contain only certain information that relates to Cox and Verizon, and omit confidential information relating to other participants in the markets subject to Verizon's forbearance requests.

The Motion to Compel describes how Verizon's refusal to provide fully-unredacted versions of the petitions violates the terms of the protective order.[10] Verizon's reliance on "internal policies" that forbid full disclosure has no effect on the requirements of the protective order, and certainly cannot stand in the way of Commission policies that require disclosure to all parties that have a legitimate reason to see the information.[11] Equally important, however, Verizon's failure to make all information available to all affected parties makes it impossible for the parties to test Verizon's claims, and therefore derogates their Administrative Procedure Act and due process rights.

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[10] Motion to Compel at 5-7.

[11] To the extent that "internal policies" are binding on Verizon, of course, it had the option of choosing not to provide the confidential information concerning other parties to the Commission. There is no requirement that any particular kind of information be provided to the Commission in a Section 10 forbearance proceeding.

Verizon's failure to disclose all relevant information makes it impossible to test its claims because it prevents other parties from comparing that information to other data they may have available to them. Verizon has suggested that it is sufficient for each party to be able to determine whether the specific data concerning that party is accurate, but this is incorrect. For instance, a party may have generated aggregate market data or company-specific data for its competitors, which could be used to determine if other information provided by Verizon is correct. Moreover, this may be the only way for data concerning some companies to be tested, since it is near-certain that some competitors in each market will choose not to participate in this proceeding.[12]

In addition, even if all of the carrier-specific information were accurate, it is likely that the parties would need access to it to provide perspective on its significance. In fact, in the *Omaha Forbearance Order,* the Commission relied almost exclusively on carrier-specific information to reach its conclusions, and much of that information was provided by Qwest, the incumbent LEC seeking relief.[13] If participants in this proceeding are denied access to such information, they will be unable to explain how and why it affects the Commission's decisional calculus. Moreover, the issue is not limited to the specific data Verizon provided in the petitions, but affects any carrier-specific confidential information filed in this proceeding.

All of these considerations demonstrate not just that denying access to all confidential data "threatens the integrity of the proceeding," but also that such a denial raises substantial APA

[12] For instance, AT&T is a certificated carrier in both Virginia and Rhode Island, but its interests in obtaining forbearance in its incumbent LEC markets are strong enough that it is unlikely to participate in this proceeding in a way that will involve testing Verizon's market share claims. For that matter, many smaller carriers lack the resources to participate fully in Commission proceedings.

[13] Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160 in the Omaha Metropolitan Statistical Area, *Memorandum Opinion and Order,* 20 FCC Rcd 19415 (2005).

and due process concerns.[14] It is a bedrock principle of administrative law that parties to a proceeding are entitled to a full and fair opportunity to confront all of the evidence that proceeding.[15] Verizon's selective release of the data it submitted to the Commission denies parties the opportunity to review and test the evidence of record that will be used to decide what relief, if any, will be granted in this proceeding. In the absence of that opportunity, parties inevitably would be handicapped.[16] Moreover, because the specific data that Verizon has refused to provide goes to the heart of its arguments for forbearance, the inability to obtain access to that data deprives parties of the ability to fully confront those claims.

It is not enough that the Commission has access to all the data provided by Verizon, because the Commission may not have all the information necessary to test that data. As noted above, competitive carriers participating in this proceeding may have independent sources of information that could show that there are errors in Verizon's analysis. However, without seeing the specific data provided by Verizon, those parties are in no position to evaluate its accuracy or

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[14] Motion to Compel at 5.

[15] *See generally Goldberg v. Kelly,* 397 U.S. 269-270 (1970) ("'Certain principles have remained relatively immutable in our jurisprudence. One of those is that where governmental action seriously injures an individual, and the reasonableness of the action depends on the fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue'") (citing *Greene v. McElroy*, 360 U.S. 474, 496-97); *Mobil Oil Corp. v. FPC*, 483 F.2d 1238, 1259 (D.C. Cir. 1973 ("[I]n any administrative proceeding, the type of procedure required is proportionate to the degree of evidentiary support required for the agency's decision"); *Nat'l Assoc. of Broadcasters v. Copyright Royalty Tribunal*, 675 F.2d 367, 375 (D.C. Cir. 1982) (affirming decision, in part, because tribunal "provided a full opportunity for all parties to present evidence[] [and] to test the evidence of other parties") (citations omitted); *Radio San Juan,* 32 F.C.C.2d 666 (1972) (Administrative Procedures Act requires Commission to provide litigants opportunity to confront evidence in proceedings to which they are a party); *WWOR-TV, Inc.,* 4 FCC Rcd 6155 (1989) (review of initial ALJ decision must incorporate all evidence considered by ALJ).

[16] It is not difficult, for instance, to imagine Verizon arguing that a party's claims are incorrect because it has not accounted for all the data in the proceeding, an argument that a party without access to that data would be unable to rebut.

to prepare alternative analyses of the data that might demonstrate that Verizon's view of competition is inaccurate. For instance, Verizon may be relying on competition from carriers that are withdrawing from the market as an important part of its showing, but in the absence of the actual data, parties would be unable to reach such a conclusion. Thus, a failure to have access to all confidential data substantially impairs the ability of other parties to prepare and prosecute their cases in this proceeding.

There are only two appropriate remedies for Verizon's failure to make all information available. First, Verizon could be required to comply with the terms of the protective order and make all information it has provided to the Commission available to any party that has agreed to the protective order's requirements. Alternatively, Verizon could be required to refile the petitions without any of the confidential information that is being withheld from other parties.[17] Either remedy would create an appropriate level playing field for this proceeding, and ensure that all parties' procedural and due process rights are respected. In either case, no party should be permitted to withhold any future filings or portions of those filings from other parties, whether or not the information provided is carrier-specific.

Cox recognizes that refiling without the confidential information that has been withheld could have a substantial effect on Verizon's ability to demonstrate that it has met the standards for forbearance.[18] This, however, is not a result of an unreasonable interpretation of the protective order or unduly stringent application of due process requirements; it is a result of Verizon's decision to rely on data that it will not share with other parties. As noted above, Verizon had other mechanisms available to demonstrate that it has competition in the affected

[17] Verizon may choose to take this course if it believes that its "internal policies" or other requirements, such as the terms of interconnection agreements, require it do so.

[18] *See* Motion to Dismiss at 7 (arguing that petitions must be dismissed if E911 data is excluded from the proceeding).

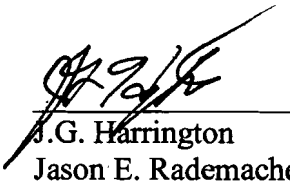
markets, and chose not to use those mechanisms. In that context, it is entirely reasonable to require Verizon to bear the consequences of its choices, particularly when the alternative is to deny other affected parties the ability to confront the evidence put before the Commission.

III. Conclusion

For all these reasons, Cox Communications, Inc. respectfully requests that the Commission adopt an order consistent with these comments.

Respectfully submitted,

COX COMMUNICATIONS, INC.



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October 30, 2006

CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle, a legal secretary at Dow Lohnes PLLC, do hereby certify that on this 30th day of October, 2006, copies of the foregoing Comments of Cox Communications, Inc. on Motion to Compel Disclosure of Confidential Information and Motion to Dismiss were served via hand delivery or first-class mail postage prepaid (denoted by *), to the following:

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Attachment 1

Excerpts from Cox-Verizon Interconnection Agreements

29.6 Confidentiality

29.6.1 Any information such as specifications, drawings, sketches, business information, forecasts, models, samples, data, computer programs and other software and documentation of one Party (a Disclosing Party) that is furnished or made available or otherwise disclosed to the other Party or any of its employees, contractors, agents or Affiliates (its Representatives and with a Party, a Receiving Party) pursuant to this Agreement (Proprietary Information) shall be deemed the property of the Disclosing Party. Proprietary information, if written, shall be marked "Confidential" or "Proprietary" or by other similar notice, and, if oral or visual, shall be confirmed in writing as confidential by the Disclosing Party to the Receiving Party within ten (10) days after disclosure. Unless Proprietary Information was previously known by the Receiving Party free of any obligation to keep it confidential, or has been or is subsequently made public by an act not attributable to the Receiving Party, or is explicitly agreed in writing not to be regarded as confidential, it: (a) shall be held in confidence by each Receiving Party; (b) shall be disclosed to only those persons who have a need for it in connection with the provision of services required to fulfill this Agreement and shall be used only for such purposes; and (c) may be used for other purposes only upon such terms and conditions as may be mutually agreed to in advance of use in writing by the Parties. Notwithstanding the foregoing sentence, a Receiving Party shall be entitled to disclose or provide Proprietary Information as required by any governmental authority or applicable law only in accordance with Section 29.6.2.

29.6.2 If any Receiving Party is required by any governmental authority or by applicable law to disclose any Proprietary Information, then such Receiving Party shall provide the Disclosing Party with written notice of such requirement as soon as possible and prior to such disclosure. The Disclosing Party may then either seek appropriate protective relief from all or part of such requirement or, if it fails to successfully do so, it shall be deemed to have waived the Receiving Party's compliance with this Section [29.6] with respect to all or part of such requirement. The Receiving Party shall use all commercially reasonable efforts to cooperate with the Disclosing Party in attempting to obtain any protective relief which such Disclosing Party chooses to obtain.

29.6.3 In the event of the expiration or termination of this Agreement for any reason whatsoever, each Party shall return to the other Party or destroy all Proprietary Information and other documents, work papers and other material (including all copies thereof) obtained from the other Party in connection with this Agreement and shall use all reasonable efforts, including instructing its employees and others who have had access to such information, to keep confidential and not to use any such information, unless such information is now, or is hereafter disclosed, through no act, omission or fault of such Party, in any manner making it available to the general public.

29.6.4 The Parties will treat Customer Proprietary Information in accordance with Section 222 of the Act and any FCC regulations issued pursuant thereto.

28.4 Confidentiality

28.4.1 All information, including but not limited to specifications, microfilm, photocopies, magnetic disks, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data, that is furnished by one Party to the other Party and that:

(a) contains customer specific, facility specific, or usage specific information, other than customer information communicated for the purpose of directory publication or directory database inclusion, or

(b) is in written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "Proprietary," or

(c) is communicated orally and declared to the receiving Party at the time of delivery, and by written notice given to the receiving Party within ten (10) days after delivery, to be "Confidential" or "Proprietary" (collectively referred to as "Proprietary Information"), shall remain the property of the disclosing Party.

28.4.2 Each Party shall keep all of the other Party's Proprietary Information confidential in the same manner it holds its own Proprietary Information confidential (which in all cases shall be no less than in a commercially reasonable manner) and shall use the other Party's Proprietary Information only for performing the covenants contained in this Agreement. Neither Party shall use the other Party's Proprietary Information for any other purpose except upon such terms and conditions as may be agreed upon between the Parties in writing or to enforce its rights hereunder (provided that the Party wishing to disclose the other Party's Proprietary Information submits the same to the Commission, the FCC or courts of competent jurisdiction, as applicable, under a request for a protective order).

28.4.3 The Parties agree that customer-specific network usage information acquired by one party solely as a result of providing services, facilities and arrangements under this Agreement is Customer Proprietary Network Information ("CPNI") as described in Section 222 of the Act. The Parties further agree to use and disclose CPNI only in accordance with Applicable Law.

28.4.4 Unless otherwise agreed, the obligations of confidentiality and non-use set forth in this Agreement do not apply to such Proprietary Information that:

(a) was, at the time of receipt, already known to the receiving Party free of any obligation to keep it confidential as evidenced by written records prepared prior to delivery by the disclosing Party; or

(b) is or becomes publicly known through no wrongful act of the receiving Party; or

(c) is rightfully received from a third person having no direct or indirect secrecy or confidentiality obligation to the disclosing Party with respect to such information; or

(d) is independently developed by an employee, agent, or contractor of the receiving Party that is not involved in any manner with the provision of services pursuant to this Agreement and does not have any direct or indirect access to the Proprietary Information; or

(e) is approved for release by written authorization of the disclosing Party; or

(f) is required to be made public by the receiving Party pursuant to Applicable Law, provided that the receiving Party shall have made commercially reasonable efforts to give adequate notice of the requirement to the disclosing Party in order to enable the disclosing Party to seek protective orders.

28.4.5 Following termination or expiration of this Agreement, and upon request by the disclosing Party, the receiving Party shall return all tangible copies of Proprietary Information, whether written, graphic, electromagnetic or otherwise, except that the receiving Party may retain one copy for archival purposes only.

28.4.6 Notwithstanding any other provision of this Agreement, the provisions of this Section 28.4 shall apply to all Proprietary Information furnished by either Party to the other in furtherance of the purpose of this Agreement, even if furnished before the Effective Date.

28.4 Confidentiality

28.4.1 All information, including but not limited to specifications, microfilm, photocopies, magnetic disks, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data, that is furnished by one Party to the other Party and that:

(a) contains customer specific, facility specific, or usage specific information, other than customer information communicated for the purpose of directory publication or directory database inclusion, or

(b) is in written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "Proprietary," or

(c) is communicated orally and declared to the receiving Party at the time of delivery, and by written notice given to the receiving Party within ten (10) days after delivery, to be "Confidential" or "Proprietary" (collectively referred to as "Proprietary Information"), shall remain the property of the disclosing Party.

28.4.2 Each Party shall keep all of the other Party's Proprietary Information confidential in the same manner it holds its own Proprietary Information confidential (which in all cases shall be no less than in a commercially reasonable manner) and shall use the other Party's Proprietary Information only for performing the covenants contained in this Agreement. Neither Party shall use the other Party's Proprietary Information for any other purpose except upon such terms and conditions as may be agreed upon between the Parties in writing or to enforce its rights hereunder (provided that the Party wishing to disclose the other Party's Proprietary Information submits the same to the Commission, the FCC or courts of competent jurisdiction, as applicable, under a request for a protective order).

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(b) is or becomes publicly known through no wrongful act of the receiving Party; or

(c) is rightfully received from a third person having no direct or indirect secrecy or confidentiality obligation to the disclosing Party with respect to such information; or

(d) is independently developed by an employee, agent, or contractor of the receiving Party that is not involved in any manner with the provision of services pursuant to this Agreement and does not have any direct or indirect access to the Proprietary Information; or

(e) is approved for release by written authorization of the disclosing Party; or

(f) is required to be made public by the receiving Party pursuant to Applicable Law, provided that the receiving Party shall have made commercially reasonable efforts to give adequate notice of the requirement to the disclosing Party in order to enable the disclosing Party to seek protective orders.

28.4.5 Following termination or expiration of this Agreement, and upon request by the disclosing Party, the receiving Party shall return all tangible copies of Proprietary Information, whether written, graphic, electromagnetic or otherwise, except that the receiving Party may retain one copy for archival purposes only.

28.4.6 Notwithstanding any other provision of this Agreement, the provisions of this Section 28.4 shall apply to all Proprietary Information furnished by either Party to the other in furtherance of the purpose of this Agreement, even if furnished before the Effective Date.